

New Hampshire Department of Revenue Administration

Fiscal Note Quick Guide

12-2890.0

SB 299-FN-A, *relative to the exclusion of certain interest under the business enterprise tax.*

Senate Ways & Means Committee

This bill excludes interest paid or accrued under a mortgage held by a nonprofit enterprise from the calculation of liability for the Business Enterprise Tax (BET). Specifically, the proposed change to RSA 77-E:1, XI adds the phrase, “except that ‘interest’ shall not include interest paid or accrued under a mortgage held by a nonprofit enterprise.”

For Tax Year 2009, of the 68,209 entities who filed BET returns, 207 were nonprofit entities. On those 207 returns, a total of \$19,636,744.98 was entered as taxable interest paid or accrued for BET purposes. At the BET tax rate of .0075, this would equate to \$147,275.59 of BET from interest. How much of this interest was paid or accrued on mortgages is not known by the Department of Revenue Administration. The Department notes that the impact may go well beyond these 207 filers in future years as taxpayers may restructure their businesses to create nonprofit holding companies to avoid the BET under this proposed exception. The Department has no way to determine what that impact might be.

The term “nonprofit enterprise,” as used in the bill, is not currently defined in statute, nor does the bill propose a definition. In order to ensure clarity for the taxpayer and the Department, a definition of “nonprofit enterprise” should be set forth in the statute.

The proposed exception of RSA 77-E:1, XI would exempt interest paid or accrued under a mortgage held by a nonprofit enterprises. The Department notes that this narrow exception may be unconstitutional by classifying taxpayers owning a common class of property. “Distinctions in tax treatment must rest upon reasonable classifications of property, not upon classifications of taxpayers owning a common class of property.” Opinion of Justices, 132 N.H. 777 (1990) citing Opinion of Justices, 115 N.H. 306 (1975). As the statute would clearly classify taxpayers (those who are nonprofit entities and those who are not), this exception would appear to be unconstitutional. The issue should be reviewed by a constitutional tax attorney.

This law would take effect July 1, 2012; however, the Department suggests that the effective date be changed to reflect a full calendar year, or by any other tax period specifically identified by the sponsor. For example, “This act shall take effect for taxable periods ending on or after December 31, 2012.”

This law could be administered by the Department of Revenue Administration without any additional cost.